

FAX TRANSMISSION

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To: Dick Daniels Date: May 26, 2004
Fax #: Pages: 8, including this cover sheet.
From: Neil F. Flynn *NF*
Subject: T04-0017

Thank you very much for forwarding the Draft Order earlier this week.

Norfolk Southern makes the following suggestions:

1. On page 5, in the "Ordering" portion of the Order, I suggest that the following two paragraphs be inserted immediately after finding (12):

"IT IS THEREFORE Ordered that permission be, and it is hereby granted to Norfolk Southern to remove all existing active warning devices and circuitry at each of the subject crossings where such active warning devices and circuitry are now installed;

IT IS FURTHER Ordered that in accordance with Section 11-1202(b)(4) of the Illinois Vehicle Code [625 ILCS 5/11-1202(b)(4)], each of the subject thirty-eight (38) crossings are hereby designated as exempt railroad grade crossings."

2. On page 2, in the list of crossings, I believe that crossing #8 was inadvertently omitted. I believe that the following information should be inserted as crossing #8:

"8. High Street (Milepost 54.80; DOT 543 305X)"

3. I am also forwarding a marked up copy of your draft Order which makes some minor, technical changes.

I hope this information is helpful. Thank you very much.

NFF:cb
Enclosure

DOCKETED

RAD/RK

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Norfolk Southern Railway Company,

Petitioner,

vs.

Illinois Department of Transportation; Blue Ridge Township;
Santa Anna Township; the City of Le Roy; Empire Road District;
Village of Downs; Downs Road District; Old Town Road District;
City of Mansfield; City of Farmer City; Bloomington Road
District; City of Bloomington and McLean County,

T04-0017

Respondents

Petition to permit the removal of certain existing warning
devices and circuitry; and for the installation of "Exempt" and
other signage at certain at grade crossings in Piatt County,
DeWitt County and McLean County, Illinois.

Draft ORDER

By the Commission:

RAILWAY

On February 25, 2004, Norfolk Southern ~~Railroad~~ Company (Company) filed a verified petition with the Illinois Commerce Commission (Commission) in the above-captioned matter seeking an order authorizing the removal of existing warning devices and circuitry and for the installation of "Exempt" and other signage at 38 highway/rail at-grade crossings along their UM Line, naming as Respondents the Illinois Department of Transportation (IDOT), Blue Ridge Township, Santa Anna Township, the City of Le Roy, Empire Road District, the Village of Downs, Downs Road District, Old Town Road District, the City of Mansfield, the City of Farmer City, Bloomington Road District, the City of Bloomington, and McLean County. . Mr. Neil Flynn, the Company's attorney, represented the Petitioner. Mr. William P. Hernan, Norfolk Southern General Supervisor-Communications and Signals, provided testimony and evidence in support of the petition. On March 19, 2004, the Company filed a Notice of Filing, which was the direct testimony of Mr. Hernan pertaining to this matter. Mr. Michael Martin, from the IDOT Staff, and Richard Daniels, from the Commission Staff, also entered appearances. On May 7, 2004, IDOT filed a Response To Petition, in which they stated that they have no objection to the Petition with

regard to two of the crossings that are part of the IDOT road system, namely Indiana Street and US 136.

Petitioner, Norfolk Southern Railway Company (Company), is engaged in the transportation of persons and/or property by rail in the State of Illinois and as such, is a rail carrier as defined by the Illinois Commercial Transportation Law. The petition stated that the Company has been or is operating a line of railroad in interstate and intrastate commerce including certain tracks located between Milepost UM-47.9 at Mansfield, Piatt County and Milepost UM-78.3 at or near Bloomington, ~~Champaign~~ ^{McLean} County, Illinois (the "UM Line") and passes through Piatt County, DeWitt County and McLean County.

The railroad line that is the subject matter of this Petition is owned and operated by the Company and is commonly referred to as the Pekin Secondary. The subject line is approximately 30.4 miles in length and crosses, at grade, a number of public streets and highways, all of which are under the jurisdiction of any one of the Respondents. According to the Petition, there are 38 highway/rail at-grade crossings along the subject UM railroad line. Since these 38 crossings are on public highways, they are subject to the jurisdiction of the Illinois Commerce Commission under the provisions of the Illinois Commercial Transportation Law (625 ILCS 5/18c-1101 et seq.) A list of the 38 crossings is as follows:

- 1: 1200E (Milepost 48.30; DOT #543 292Y)
- 2: 1100E (Milepost 49.40; DOT #543 294M)
- 3: 1000E (Milepost 50.30; DOT #543 296B)
- 4: 900E (Milepost 51.40; DOT #543 298P)
- 5: 800E (Milepost 52.40; DOT #543 301V)
- 6: 725E (Milepost 53.20; DOT #543 303J)
- 7: Indiana Street (Milepost 54.50; DOT #543 304R)
- 9: Allen Street (Milepost 54.90; DOT #543 306E)
- 10: John Street (Milepost 55.60; DOT #543 310U)
- 11: 1500N/Chapel Road (Milepost 56.80; DOT #543 316K)
- 12: County Line Road (Milepost 58.20; DOT #543 319F)
- 13: TR 474A (Milepost 59.80; DOT #543 323V)
- 14: TR 458 (Milepost 60.30; DOT #543 325J)
- 15: US 136 (Milepost 61.00; DOT #543 326R)
- 16: TR 450 (Milepost ~~52.20~~; DOT #543 327X) *should be 62.20*
- 17: East Street (Milepost 64.25; DOT #543 329L)
- 18: Chestnut Street (Milepost 64.35; DOT #543 340L)
- 19: Main Street (Milepost 64.40; DOT #543 341T)
- 20: Cedar Street (Milepost 64.45; DOT #543 342A)
- 21: West Street (Milepost 64.55; DOT #543 343G)
- 22: Pine Street (Milepost 64.59; DOT #543 344N)
- 23: Buck Street (Milepost 64.69; DOT #543 345V)

- 24 & 25: Center Street (Milepost 64.74; DOT #543 346C and DOT #543 349X)
- 26: Hemlock Street (Milepost 64.90; DOT #543 347J)
- 27: TR 405 (Milepost 66.20; DOT #543 351Y)
- 28: TR 390 (Milepost 67.30; DOT #543 353M)
- 29: TR 366A (Milepost 69.25; DOT #543 356H)
- 30 Seminary Road (Milepost 71.71; DOT #543 361E)
- 31: Main Street (Milepost 71.29; DOT #543 363T)
- 32: Gill Road (Milepost 72.89; DOT #543 367V)
- 33: TR 429 (Milepost 73.06; DOT #543 368C)
- 34: TR 296 (Milepost 74.79; DOT #543 370D)
- 35: Old Colonial (Milepost 75.5; DOT #543 371K)
- 36: TR 367 (Milepost 76.4; DOT #543 374F)
- 37: Woodridge Road (Milepost 77.3; DOT #543 377B)
- 38: Rhodes Lane (Milepost 77.9; DOT #543 378H)

The Petition states that on or about August 28, 1996, Norfolk Southern acquired the subject Line from Consolidated Rail Corporation. There have been no train movements over any of the subject crossings for over 8 years. The Company has filed a Notice of Discontinuance with the Surface Transportation Board for the discontinuance of operations on the subject Line. The Surface Transportation Board issued a Notice of Exemption with respect to the Notice of Discontinuance and it became effective on March 12, 2004.

Railway

According to the Petition and Mr. Hernan's testimony, the Norfolk Southern ~~Railroad~~ Company will, at those crossings which are currently protected by active warning devices, remove the active warning devices and related circuitry, and install a sign post, and mount on each such post both an "Exempt" sign and an "Out of Service" sign. That signage will be installed and maintained on both sides of each such crossing. At those crossings that are currently protected by crossbuck signs only, the Company will mount on the existing crossbuck sign post both an "Exempt" sign and an "Out of Service" sign. This signage will also be installed and maintained on both sides of the crossing. All costs and expenses related to these modifications, sign installation, and sign maintenance, will be borne by said Company (the Petitioner).

Vehicular traffic over some of the crossings is substantial, including school buses and other vehicles that are required to stop at all railroad crossings by law. By reason of the volume of vehicular traffic and no train traffic, these crossings act as unnecessary restrictions to vehicular traffic. Staff therefore recommends that Petitioner's request to post "Exempt" and "Out of Service" signs at the aforementioned crossings so that these vehicles no longer have to stop at the affected crossings be granted in total. The signs must conform to the latest version of the Manual on Uniform Traffic Control Devices (MUTCD).

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction of the subject matter and parties herein;
- (2) matters contained in the prefatory portion of this Order are adopted as findings of fact;
- (3) Petitioner, Norfolk Southern Railway Company, is engaged in the transportation of persons and/or property by rail in the State of Illinois, and as such is a rail carrier as defined by the Illinois Commercial Transportation Law;
- (4) the Respondents, Illinois Department of Transportation; Blue Ridge Township; Santa Anna Township; the City of Le Roy; Empire Road District; Village of Downs; Downs Road District; Old Town Road District; City of Mansfield; City of Farmer City; Bloomington Road District; City of Bloomington and McLean County are all political subdivisions of the State of Illinois;
- (5) all of the thirty eight (38) highway/rail at-grade crossings listed above are on public highways and are therefore subject to the jurisdiction of the Illinois Commerce Commission under the provisions of the Illinois Commercial Transportation Law;
- (6) there has been no rail traffic on the subject Norfolk Southern Pekin Secondary line for at least eight (8) years and the Company has filed a Notice of Discontinuance with the Surface Transportation Board for the discontinuance of operations on the subject Line. The Surface Transportation Board issued a Notice of Exemption with respect to the Notice of Discontinuance and it became effective on March 12, 2004;
- (7) the installation of "Exempt" and "Out of Service" signs at each of the above listed crossings is consistent with the best interest of the public health, convenience, and necessity;
- (8) Staff has reviewed this project and concluded that these crossings in their present state act as unnecessary restrictions to school buses and other vehicles that are required to stop at all railroad crossings by law; and that the installation of "Exempt" and "Out of Service" signs would remove said restrictions.

- x (9) For any of the crossings listed above that have active warning devices, Petitioner should be granted permission to remove the devices and related circuitry and install a sign post, and mount on each such post both an "Exempt" sign and an "Out of Service" sign. All such signage must be installed and maintained on both sides of each such crossing. At those crossings that are currently protected by crossbuck signs only, the Petitioner will mount on that existing crossbuck sign post both an "Exempt" sign and an "Out of Service" sign. This signage must also be installed and maintained on both sides of the crossing, and all signage shall be in accordance with the Manual on Uniform Traffic Control Devices;
- (10) All costs and expenses related to the modifications listed in Finding (9), as well as the maintenance of the "Exempt" and "Out of Service" signage at each of the above listed crossings, will be borne by the Company (Petitioner);
- (11) Before commencing work, Norfolk Southern Railway Company should file Form 1 of 92 I.A.C. 1535 of this Commission showing the changes herein required at each crossing and shall also file Form 2 when the work is completed;
- (12) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects the parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions;

Amend → ~~IT IS THEREFORE~~ ^{FURTHER} ORDERED that permission be, and it is hereby granted to Norfolk Southern Railway Company to install "Exempt" signs and "Out of Service" signs on both sides of each crossing listed above in a manner specified in Finding (9) herein, and all newly installed signage shall be in accordance with the Manual on Uniform Traffic Control Devices and all work shall be accomplished in accordance with 92 Illinois Administrative Code 1535;

IT IS FURTHER ORDERED that the cost of the improvements herein approved be, and the same are hereby to be borne entirely by the Petitioner, Norfolk Southern Railway Company;

IT IS FURTHER ORDERED that Norfolk Southern Railway Company is hereby required and directed to proceed with the project herein approved and in all aspects thereof to conform to the requirements of 92 Illinois Administrative Code 1535.

IT IS FURTHER ORDERED that Norfolk Southern Railway Company shall file Form 1 of 92 I.A.C.1535 of this Commission showing the changes at each of the crossings as herein required, and shall also file a Form 2 when the sign installations and crossing device removals are completed.

IT IS FURTHER ORDERED that Norfolk Southern Railway Company shall notify the Director of Processing, Transportation Division of the Commission within six months from the date of this order of the progress they have made toward completion of the work herein required.

IT IS FURTHER ORDERED that the work herein approved shall be completed within one year of the date of this Order.

IT IS FURTHER ORDERED that Norfolk Southern Railway Company shall thereafter maintain the newly installed "Exempt" and "Out of Service" signage.

IT IS FURTHER ORDERED that Norfolk Southern Railway Company shall within five (5) days of the completion of the work herein, file a National Inventory Update Report Form with the Commission's Director of Processing, Transportation Division, as further notice of said completion.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders as it may deem necessary.

IT IS FURTHER ORDERED that any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting a extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition

For Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests For Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that any future changes at the crossings, or reactivation of service on this line by Norfolk Southern Railway Company, shall be made in accordance with 92 Illinois Administrative Code 1535 and all applicable Commission rules and regulations.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this -- day of --, 2004.